



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNDL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) by the landlord to obtain an order of possession for unpaid rent or utilities, a monetary order for damages to the unit, site or property, and to recover the cost of the filing fee.

The landlord, the tenant and a witness for the tenant (witness) who did not testify, appeared at the teleconference hearing. The landlord and tenant gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Although the tenant claims that they did not receive the Notice of Dispute Resolution Proceeding document (Notice of Hearing), the tenant did confirm that they called into the Residential Tenancy Branch (RTB) and was made aware of the hearing and as a result, called into the hearing. Furthermore, the landlord provided a registered mail tracking number, which has been included on the cover page of this decision for ease of reference. The landlord testified that the tenant was served by registered mail to the rental unit address on October 18, 2019 and that the package contained the Notice of Hearing dated October 15, 2019, the application and the documentary evidence.

Although the tenant confirmed that they had a mail key for their own mailbox unit, the tenant denies having received a notice card for the registered mail (notice card). The tenant accused the landlord of using the tenant's spare mailbox key and taking the notice card so that the tenant could not receive it. The tenant did admit; however, that they called into the RTB and was made aware of the hearing. The landlord denied that they entered the tenant's mailbox to take any mail. In addition, I have considered that the tenant confirmed that they were served with the 10 Day Notice for Unpaid Rent or

Utilities dated September 21, 2019 (10 Day Notice). Given the above, I find the tenant to be sufficiently served in accordance with the Act as I am not considering the monetary claim for damages as it is premature, which I will describe further below. As a result of the above, the hearing continued to determine if the tenancy will continue or end.

Preliminary and Procedural Matters

As indicated above, I find the landlord's claim for damages in the amount of \$750.00 is premature as the tenant continues to occupy the rental unit and the tenant has until the end of the tenancy to repair any damages. Therefore, I dismiss the landlord's application for damages, with leave to reapply.

In addition to the above, the parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a month to month tenancy began on August 20, 2019. The parties also agreed that monthly rent of \$1,650.00 was due on the first day of each month according to the written tenancy agreement. The parties confirmed that the tenant has not paid a security deposit.

The landlord submitted a copy of the 10 Day Notice in evidence. The tenant did not deny that they were served by the landlord on September 21, 2019 with the 10 Day Notice. The tenant testified that they applied to dispute the 10 Day Notice and a previous hearing file number (previous hearing) has been included on the cover page of this decision for ease of reference. The tenant's application to dispute the 10 Day Notice was dismissed without leave to reapply due to the tenant failing to attend the previous hearing, while the landlord did attend the previous hearing.

On the 10 Day Notice, the landlord indicates that \$1,650.00 in rent was owing as of November 20, 2019. The tenant admitted that they paid only \$915.00 on November 21, 2019, and have not paid the rest of the November 2019 rent. The landlord stated that

\$915.00 was not paid, and was actually \$882.50. Once the outcome of the previous hearing was reviewed during this hearing, the tenant disconnected from the hearing at 11:30 a.m. Pacific Time and was given 5 minutes to call back into the hearing to provide the tenant with a fair opportunity to be heard. The tenant failed to call back into the hearing and by 11:42 a.m., which was 12 minutes after the tenant disconnected from the hearing, the hearing concluded.

The effective vacancy date listed on the 10 Day Notice was September 30, 2019, which has passed. The landlord confirmed that no money has been paid since the partial rent for September 2019 was paid in the amount of \$882.50.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of Possession – As the tenant failed to attend the previous hearing and considering that the tenant has not successfully applied for a Review Consideration or Judicial Review, I find that the tenant failed to dispute the 10 Day Notice in accordance with section 46 of the *Act*, which only provides five days to dispute the 10 Day Notice. Section 46(5) of the *Act* states the following:

46(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

[Emphasis added]

Based on the above, I find that the 10 Day Notice was not successfully disputed, the full amount of rent was not paid, and that the 10 Day Notice is valid as a result. I have also reviewed section 52 of the *Act* and find that the 10 Day Notice complies with section 52 of the *Act*.

Furthermore, I have considered the tenant's testimony, which confirmed they did not pay the full amount of September 2019 rent, that the tenant continues to occupy the

rental unit, and that the landlord confirmed that no rent has been paid since the tenant's partial payment of \$882.50 in late September 2019.

Accordingly, and pursuant to section 55 of the Act, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on October 1, 2019, which automatically corrects under section 53 of the Act as I find the 10 Day Notice was served on September 21, 2019.

As the landlord's application had merit, I grant the landlord the recovery of the \$100.00 filing fee pursuant to section 72 of the Act. I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of \$100.00 as a result.

Conclusion

The landlord's application is partially successful.

I find the tenancy ended on October 1, 2019.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord is granted a monetary order of \$100.00 pursuant to section 67 of the Act for the filing fee. Should the landlord require enforcement of the monetary order, the landlord must first serve the tenant and then this order may be enforced in the Provincial Court of British Columbia (Small Claims).

This decision will be emailed to both parties.

The orders will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 12, 2019

Residential Tenancy Branch